S.B. CIVIL MISC.WRIT PETITION NO.5191/2006
(Chaturbhuj Vs. Goverdhan Lal & Ors.)

Date of Order ::14th August 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. S.L.Jain for the petitioner.
Mr.Rajesh Parihar for
Mr.Suresh Shrimali for respondent.

The tenant has preferred this writ petition against the order dated 24.07.2006 (Annex.6) passed by the Appellate Rent Tribunal, Pratapgarh in Appeal No.18/2005 whereby the learned Appellate Tribunal has affirmed the certificate of recovery of possession issued by the Rent Tribunal, Chittorgarh on 25.07.2005 in Case No. 12/2004.

The landlord sought eviction of the petitioner-tenant with the submissions that the shop in question was let out on the monthly rent of Rs. 200/- per month; that the tenant has not made payment of rent for 12 months; that the tenant was served with a notice on 20.02.2004 asking him to deposit the rent in the savings bank account No.63279 maintained with State Bank of Bikaner & Jaipur, Chittorgarh Main Branch but the tenant did not deposit any rent and thus was a defaulter; and that the premises were required reasonably and bona fide

by the landlord for his having retired from Government service and intending to start his own business. The petitioner-tenant contested the petition, inter alia, on the submissions that the premises were taken on rent on 12.08.1982 at Rs. 100/- per month; that the rent was revised in the year 1988 to Rs. 120/- per month and in the year 1989 to Rs. 125/-; that the landlord issued receipts after accepting rent till 12.02.1991 but thereafter stopped issuing receipts; that on 12.04.2001 the landlord wanted the rent to be revised to Rs.200/- per month but looking to the financial condition of the tenant and at the instance of the neighbours Ramesh Kansara and Vasudev Sindhi, rent was revised to Rs. 150/- per month from April 2001; that after service of notice, the landlord met the tenant to recover rent for the period 12.02.2004 to 12.03.2004 that was paid in the presence of Shri Ramesh Kansara and it was given out by the landlord that the notice was issued only because the rent was due for long; that similarly the rent for the period 12.03.2004 to 12.04.2004 was again accepted in the presence of aforesaid Shri Ramesh Kansara. The petitioner-tenant also contested the ground of reasonable and bona fide requirement.

After framing of the necessary issues and considering the evidence, the learned Rent Tribunal did not accept the ground of reasonable and bona fide requirement and further found that the applicant-landlord has failed to establish the rate of rent at Rs.200/- per month; but then, rejected the case of the petitioner-tenant in relation to the payment of rent and observed that after receiving notice, the tenant did not make payment of rent even at the rate of Rs. 150/- per month. The Tribunal also observed that the suggestion of making payment of rent for subsequent months in the presence of Shri Ramesh Kansara (NAW-3) is proved to be wrong because the said witness specifically stated in his cross-examination that no such payment was made in his presence. The Tribunal held the tenant defaulter in making payment of rent and, thus, issued certificate for recovery of possession.

The learned Appellate Rent Tribunal has affirmed the finding in relation to the ground of default; and has reversed the finding in relation to the reasonable and bona fide requirement and has held the landlord entitled .for possession on the ground of his requirement too.

This writ petition was filed on 10.08.2006 and notices were issued on 20.09.2006. From the documents placed on

record by the respondent-landlord it is borne out that the certificate for recovery of possession was executed on 13.09.2006 and possession was handed over to him, after breaking open the locks of the shop in question.

Arguing for the petitioner, learned counsel Mr. Jain has strenuously contended: (a) that Appellate Rent Tribunal has been in error in finding the petitioner-tenant a defaulter and in failing to consider the significant fact that the landlord asserted rate of rent at Rs. 200/- per month and served notice demanding rent at such rate only; and after consideration of material available on record it has been specifically found that the agreed rate of rent was Rs.150/- per month; thus, according to learned counsel, the notice was fundamentally illegal and cannot be said to be a notice in conformity with the requirements of proviso to Section 9(a) of the Rent Control Act, 2001 ('the Act') and ground of default is required to be rejected; (b) that the Appellate Tribunal has been in error in reversing the finding on requirement of the landlord without considering the evidence available on record; and (c) that the certificate for recovery of possession has been executed on 13.09.2006 though per proviso to Section 15(8) of the Act as added by the Amendment Act of 2005, certificate was not executable for a period of 6 months from the date of decision;

and in the present case, certificate for recovery has been affirmed by the Appellate Tribunal only on 24.07.2006 and, therefore, execution proceedings have been undertaken squarely contrary to law.

Having given a thoughtful consideration to the submissions made by the learned counsel for the petitioner and having examined the record, this Court is clearly of opinion that this writ petition remains bereft of substance and does not merit admission.

So far the ground of default is concerned, it is an admitted position that the landlord served a notice upon the tenant-petitioner demanding arrears of rent and disclosing the particulars of his bank account. It is also borne out from record that the tenant did not make any payment towards the rent, at any rate whatever, in response to the said notice. The plea taken by the tenant of making payment of subsequent rent in the presence of the neighbour Ramesh Kansara has fallen to the ground when the said witness categorically denied the tenant having made any payment in his presence. The learned Tribunal has rightly observed that even after receipt of the notice, the tenant has not made any payment of rent, not even at Rs.150/- per month, the rate admitted by himself. The

finding on default does not appear to be suffering from any error of law or facts. Merely because the landlord asserted the rate of rent at Rs. 200/- per month, and the tenant asserted the rate at Rs.150/- per month, and the learned Tribunals have found the rate of rent to be as asserted by the tenant, the other part of the matter that the tenant has not made the payment of rent even at the rate admitted by him, cannot be lost sight of. The finding on default does not warrant any interference.

In relation to the finding on reasonable and bona fide requirement, it appears that the learned Rent Tribunal has decided the matter in a rather cursory manner with the observation that the landlord was getting pension at Rs.6,000/- per month and has received other retiral benefits and that one of his son was already carrying on business; and that the applicant was a retired person and has not clarified as to why he wanted to establish a shop? The considerations being obviously not in accord with the requirements of law, the learned Appellate Tribunal has dealt with the evidence on record and has rightly found the said ground to be established. There appears no scope for interference in this writ petition in such finding on facts.

So far the grievance concerning execution of the certificate before expiry of period of 6 months is concerned, such ground appears to be more of academic value in this case rather than of substance; and even otherwise prima facie it appears difficult to import the period of 6 months as provided under Section 15 of the Act for the purpose of order to be passed by the Appellate Rent Tribunal under Section 19, particularly looking to the requirements of Section 20 of the Act. However, such aspects need no further dilation in the present case for the certificate for recovery of possession having been executed as back as on 13.09.2006. In the facts and circumstances of this case, there appears no reason to consider any interference in the writ jurisdiction.

The writ petition fails and is, therefore, dismissed.

(DINESH MAHESHWARI),J

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